



BILLING CODE: 4410-09-P

**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Greg N. Rampey, D.O.
Dismissal of Proceedings**

On October 27, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Greg N. Rampey, D.O. (Registrant), of Tulsa, Oklahoma. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. BR7006085 on the ground that he has "no state authority to handle controlled substances" in the State of Oklahoma, the State in which he is registered with the DEA. Order to Show Cause, Government Exhibit (GX) 2, at 1, 2 (citing 21 U.S.C. 824(a)(3)). For the same reason, the Order also proposed the denial of any of Registrant's "applications for renewal or modification of such registration and any applications for any other DEA registrations." *Id.* at 1.

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is the holder of Certificate of Registration No. BR7006085, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 8596 E. 101st, Ste B, Tulsa, Oklahoma. *Id.* The Order also alleged that this registration does not expire until April 30, 2018. *Id.*

As the substantive ground for the proceeding, the Show Cause Order alleged that "on September 21, 2017, the Oklahoma State Board of Osteopathic Examiners cancelled [Registrant's] osteopathic medical license" and his "Oklahoma Bureau of Narcotics and Dangerous Drugs registration is inactive." *Id.* at 1-2. The Show Cause Order thus alleged that Registrant is "currently without authority to practice medicine or handle controlled substances in

the State of Oklahoma, the [S]tate in which [he is] registered with the DEA,” and that, as a consequence, “DEA must revoke” his registration. *Id.* at 2.

The Show Cause Order notified Registrant of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

According to an Affidavit of Service filed in this matter, on October 30, 2017, personnel from DEA’s Office of Chief Counsel, Diversion and Regulatory Litigation Section, attempted to serve the Show Cause Order on the Registrant by regular first class mail addressed to the Registrant at his registered address. GX 6. The Government represents that its mailing was not returned as undeliverable. *Id.* On January 10, 2018, the Government submitted a Request for Final Agency Action (RFAA) representing that Registrant did not request a hearing and “ha[d] not filed any written statement in lieu of a hearing” within 30 days of service and seeking a final order revoking his registration. GX 7, at 2.

On February 6, 2018, the then-Acting Administrator issued an Order noting that the Government’s effort at service in this case was “a departure from the Agency’s traditional practice.” GX 8. The Order further noted that “the Government cites to no authority establishing that a sole effort of mailing by first class mail (with no evidence of delivery to the address) is sufficient to provide constitutionally adequate service for initiating a proceeding under the Due Process Clause.” *Id.* As a result, the then-Acting Administrator directed the Government to either address why its effort was consistent with the Due Process Clause or to engage in additional reasonable efforts to serve Registrant. *Id.*

On March 29, 2018, my office received the Government's Second Request for Final Agency Action (SRFAA) describing a Diversion Investigator's additional attempts to serve the Show Cause Order and again seeking a final order revoking Registrant's registration. SRFAA, at 2. The Government also submitted a Certification of Registration History, which was sworn to on December 19, 2017. GX 1, at 3. In that Certification, the Associate Chief of the Registration and Program Support Section stated that DEA Registration No. BR7006085 "expires on April 30, 2018." *Id.* at 1-2. The Associate Chief further stated that "Gre[g] N. Rampey, M.D., has no other pending or valid DEA registration(s) in Oklahoma." *Id.* at 3. Pursuant to 5 U.S.C. 556(e), I take official notice of Registrant's registration record with the Agency. *See also* 21 CFR 1316.59(e).¹ According to that record, DEA Registration No. BR7006085 expired on April 30, 2018, and Registrant has not filed an application, whether timely or not, to renew his registration or for any other registration in the State of Oklahoma.²

DEA has long held that "if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke." *Donald*

¹ Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Registrant is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Registrant the opportunity to refute the facts of which I take official notice, Registrant may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

² As already noted, my office received the Government's Second Request for Final Agency Action on March 29, 2018. This filing arrived in my office too late for me to issue a final decision and order before the registration would expire on April 30, 2018. DEA regulation 21 CFR 1316.67 requires that I issue a final order that takes effect not less than 30 days from the date of publication in the Federal Register unless the public interest necessitates an earlier effective date. The record before me fails to include facts supporting a finding that "the public interest in the matter necessitates an earlier effective date." 21 CFR 1316.67. Thus, even if I had submitted a final order in this case to the Federal Register on the same day (March 29, 2018) that my office received the SRFAA to revoke Registrant's registration, I could not have issued an order that would have taken effect by April 30, 2018 because the Federal Register would not have been able to publish it 30 days before the registration's April 30, 2018 expiration – *i.e.*, by Saturday, March 31, 2018. And as the Agency has previously noted, there is no point in issuing a ruling on a Show Cause Order where, as here, that ruling would constitute an advisory opinion subject to vacation on judicial review. *See, e.g., Josip Pasic, M.D.*, 82 FR 24146, 24147 (2017) ("As the requested factual findings and legal conclusions would be subject to vacation on judicial review, there is no point in making them").

Brooks Reece II, M.D., 77 FR 35054, 35055 (2012) (quoting *Ronald J. Riegel*, 63 FR 67312, 67133 (1998)); *see also Thomas E. Mitchell*, 76 FR 20032, 20033 (2011). “Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon.” *Reece*, 77 FR at 35055. Accordingly, because Registrant has allowed his registration to expire and has not filed any application for registration in Oklahoma, this case is now moot and will be dismissed.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause issued to Greg N. Rampey, D.O., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 14, 2018.

Uttam Dhillon,
Acting Administrator.

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